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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,278	08/27/2003	Jingqiang Fan	15169US01	5505

23446 7590 06/17/2005

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EXAMINER

MAY, ROBERT J

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/649,278	FAN, JINGQIANG	
	<b>Examiner</b>	<b>Art Unit</b>	
	Robert May	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,7-9,13,14,17 and 18 is/are rejected.
- 7) ☒ Claim(s) 4-6,8-12,15-16,& 19-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

The abstract is objected to because the applicant is using the claim terminology "comprises" in the first sentence.

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the ornamental lights

that are attached to the inside of the body as claimed in Claims 7-9, 14, and 18 must be shown or canceled from the claim(s). No new matter should be entered.

The drawings are objected to because the font size of reference characters 8 and o, in Fig. 3 are too small and nearly illegible. Appropriate action is required.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

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should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Dependent claims 6, 8-12, 16, and 20 are objected to because of the following informalities: Improper numbering of dependent claims. For example: Claim 6 is separated from dependent Claim 3 by dependent Claim 5, which does not also depend from Claim 3. Claim 6 should be renumbered as Claim 5. Appropriate correction is required.

A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim.

A claim, which depends from a dependent claim, should not be separated by any claim, which does not also depend from said dependent claim. It should be kept in mind

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that a dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Onishi (US Pat. 6,413,594).

In regard to Claim 1, Onishi discloses an animated wire frame including a movable neck (Fig. 4), with a plurality of lights attached thereto (Col. 4, Lines 11-13), a motor (1) disposed within body (Figs. 1 and 4), a motor shaft (2a) attached to motor (1), and a drive rod (3a) pivotally connected to the transmission shaft.

In regard to Claim 7, Onishi further discloses the animated wire frame in a grid like pattern in Figures 3-4, 6-7, and 9. Furthermore, Onishi also discloses that the wire frame may also include bulbs (Col. 4, Lines 11-13), which can be construed to be inside the body.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 17 is rejected under 35 U.S.C. 102(e) as being anticipated by Su (US Pat. 6,769,954).

With regard to Claim 17, Su discloses in Fig. 1, a Christmas deer toy with a motor disposed within (51) with a transmission shaft or main driving arm (53) attached to the motor and a first arm for moving the tail (55) and a second arm for moving the head (57) where both arms are attached to the main driving arm (53). Furthermore, Su discloses a third arm (33) attached to the main driving arm (53), for moving the neck portion.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-3, & 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Onishi in view of Su.

In regard to Claims 2-3, Onishi discloses all the elements of Claim 1, but fails to disclose a second and third drive rod pivotally connected to a second and third moveable portion respectively. Su discloses in Fig. 1, a second movement arm (55) for moving the tail (40), and a third arm (33) for moving the neck portion. Allowing the head, neck, and tail portion to move on the deer toy enables a more vivid like action (Col. 1, Line 42). Therefore it would be obvious to combine the animated wire frame of Onishi with moveable neck portion with the deer toy of Su with moveable head and tail portion so as to enable a more vivid lifelike action.

In regard to Claim 13, Onishi discloses all of the claimed elements except for a drive rod for operating the lower jaw portion of the body. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a drive rod operating the jaw portion of the body, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70 (CCPA 1950). Su discloses a deer toy with a drive rod for moving the tail (55) up and down which is connected to the main transmission shaft (53) in order to help the deer toy move in a vivid manner (Col. 1, Lines 38-42). Therefore, it would have been obvious to combine the Deer toy of Onishi with the moveable tail of Su and rearrange the



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components to produce a moveable lower jaw in order to allow the deer to act in a more vivid lifelike manner.

In regard to Claim 14, Onishi further discloses the animated wire frame in a grid like pattern in Figures 3-4, 6-7, and 9. Furthermore, Onishi also discloses that the wire frame may also include bulbs (Col. 4, Lines 11-13), which can be construed to be inside the body and is generally known in the art that having lights internal to the body would protect the lights from any externally exerted forces that could cause damage to the lights.

Claims 8-9, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Su as applied to claims 2-3, and 17 above, and further in view of Gover (US Pat. 1,577,903). Su discloses all of the elements of Claims 8-9 except for lights attached to the inside of the body. Gover discloses a light bulb in Figure 1 disposed inside of a dog shaped figure in order to add to the attractiveness of the figure (Pg 2, Lines 80-84), and it is generally known in the art that placing the light inside of a body would protect the lights from any externally exerted forces that could cause damage to the lights.

#### ***Allowable Subject Matter***

Claims 4-6, 10-12, and 15-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Referring to claims 4-6, and 15-16, the prior art does not teach or suggest a gimbal or two annuluses perpendicular to each other as a connecting member between a drive rod and a moveable body portion.

Claims 10-12 are objected to because they depend on Claims 4-6 respectively.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pan '282, and '164, disclose a wired light supporting framework shaped into an animal like figure with a motor disposed within for appendage movement of framework. Lee and Stern disclose a motor actuated mechanism for animated figures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert May whose telephone number is (571) 272-5919. The examiner can normally be reached between 9 am– 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax number for the organization where this application or proceeding is assigned is (703) 872-9306 for all communications.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval PAIR system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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